



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0886]

RIN 1625-AA87

Moving Security Zone Around Crane Barge, New York Harbor Upper Bay and Hudson River, NY and NJ.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a moving security zone around a crane barge that will operate from Jersey City, NJ on New York Harbor Upper Bay to the Tappan Zee Bridge on the Hudson River at river mile 27.0. The moving security zone will extend 200 yards on all sides of the Left Coast Lifter crane barge. Vessels and people are prohibited from entering this security zone.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until December 31, 2014. For the purposes of enforcement, actual notice will be used from October 6, 2014, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2014-0886]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Jeff Yunker, Waterways Management Division, Coast Guard Sector New York; telephone 718-354-4195, e-mail [Jeff.M.Yunker@uscg.mil](mailto:Jeff.M.Yunker@uscg.mil). If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

COTP	Captain of the Port New York
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
NYSTA	New York State Thruway Authority
TFR	Temporary Final Rule

#### A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because specifics associated with the crane barge transit were not received in time to publish an NPRM and seek comments before the subject transit. Publishing an NPRM and delaying the effective date of this rule to await public comments would be impracticable and contrary to the public interest since it would inhibit the Coast Guard's ability to fulfill its statutory missions to protect and secure the ports and waterways of the United States. Upon completion of the vessel's transit to the construction site, the Left Coast Lifter crane barge will be operating within the Regulated Navigation Area established for this project and published in the July 25, 2014, issue of the Federal Register (79 FR 43250).

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. For the same reasons

discussed in the preceding paragraph, delaying the effective date of this rule would be impracticable and contrary to the public interest.

#### B. Basis and Purpose

The legal basis for this rule is 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define security zones.

The New York State Thruway Authority has requested that the Coast Guard establish a temporary moving security zone on the waters of New York Harbor Upper Bay and the Hudson River during the transit of the Left Coast Lifter crane barge from Jersey City, NJ to the Tappan Zee Bridge. The purpose of the regulation is to ensure the security of the crane barge, facilities, and the surrounding areas and provide safety of life on the navigable waters in the COTP zone. Accordingly, the COTP has determined that this security zone is necessary to protect the crane barge and facilities.

#### C. Discussion of Rule

For the reasons discussed above, this rule establishes a temporary moving security zone within a 200-yard radius of the Left Coast Lifter crane barge as it transits on the waters of New York Harbor Upper Bay and the Hudson River from Jersey City, NJ

to the Tappan Zee Bridge on the Hudson River at river mile 27.0. This temporary security zone will be in effect from 5 a.m. on October 6, 2014 until 8 p.m. on December 31, 2014.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This determination is based on the limited time that vessels will be restricted from the zone as the crane barge transits past their location. The temporary moving security zone will only be enforced for a limited duration from approximately 5 a.m. to 12:30 p.m. on October 6, 2014 as the crane barge transits to a staging area at the bridge site and from approximately 12 p.m. to 7 p.m. on October 8, 2014 as the barge transits from the staging area to the bridge. If necessary, this rulemaking allows for an

enforcement period through December 31, 2014 due to any unforeseen circumstances delaying the vessel's schedule. Thus, the Coast Guard expects minimal adverse impact on mariners from the zone's enforcement based on the limited duration of the enforcement period. Moreover, the Coast Guard also expects minimal adverse impact on mariners in light of the limited geographic area affected and because mariners may request authorization from the COTP or a designated on-scene representative to transit the zone. In addition, before and during the enforcement period, the Coast Guard will issue maritime advisories widely available to users of the waterway, including verbal broadcast notice to mariners and distribute a written notice to waterway users online at <http://homeport.uscg.mil/newyork>.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial

number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of New York Harbor Upper Bay and the Hudson River between Jersey City, NJ and the Tappan Zee Bridge at river mile 27.0.

This temporary security zone will not have a significant economic impact on a substantial number of small entities for all of the reasons discussed in the "REGULATORY PLANNING AND REVIEW" section above.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section above.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see "ADDRESSES") explaining why you think it qualifies and how and to what degree this rule would economically affect it.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any

one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of

power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a security zone and thus, is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T01-0886 to read as follows:

§ 165.T01-0886 Security Zone, New York Harbor Upper Bay and Hudson River; NY and NJ.

(a) Location. The following area is a temporary moving security zone: All waters of New York Harbor Upper Bay and the Hudson River within a 200 yard radius of the Left Coast Lifter crane barge as it transits between Jersey City, NJ on New York Harbor Upper Bay and the Tappan Zee Bridge on the Hudson River at river mile 27.0.

(b) Definitions. For purposes of this section a "Designated on-scene representative" is any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on the COTP's behalf. A designated on-scene representative may be on a Coast Guard vessel, or onboard a

federal, state, or local agency vessel that is authorized to act in support of the Coast Guard.

(c) Effective and enforcement period. This rule will be effective and enforced from 5 a.m. on October 6, 2014 until 8 p.m. on December 31, 2014.

(d) Regulations. In accordance with the general regulations in 33 CFR 165.33, no person or vessel may enter or move within the security zone created by this section unless granted permission to do so by the COTP or a designated on-scene representative. Entry, transit, or anchoring within the security zone described in paragraph (a) of this section is prohibited unless authorized by the COTP.

(e) Notice. The COTP will provide notice of the establishment and enforcement of this security zone in accordance with 33 CFR 165.7.

(f) Vessel operators given permission to enter or operate in this security zone must comply with all directions given to them by the COTP or a designated on-scene representative.

(g) Vessel operators desiring to enter or operate within this security zone shall telephone the COTP at 718-354-4356 or a designated on-scene representative via VHF channel 16 to obtain permission to do so.

(h) Penalties. Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: October 3, 2014

G. Loeb1  
Captain, U.S. Coast Guard  
Captain of the Port New York

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